

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD and
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Case No. 2:23-CV-00103-JRG-RSP

JURY TRIAL DEMANDED

**SAMSUNG'S OBJECTIONS TO THE MEMORANDUM ORDER
ON SAMSUNG'S DAUBERT MOTION AND MOTION TO STRIKE
EXPERT REPORT OF DR. ANDREAS GROEHN (DKT. NO. 376)**

Magistrate Judge Payne's memorandum order (Dkt. 376, the "Order") denied Samsung's *Daubert* Motion and Motion to Strike Expert Report of Dr. Andreas Groehn (Dkt. 181). Samsung respectfully objects to and seeks *de novo* review of the Order.

A. Dr. Groehn's Survey is Divorced from the Facts of the Case

First, the Order erred in concluding that "there is nothing improper about Headwater relying on a previous survey and applying it to the facts of this case through their damages expert." Order at 3. Federal Rule of Evidence 702 is clear: an expert's opinion must "reflect[] a reliable application of [reliable] principles and methods **to the facts of the case.**" However, Dr. Groehn did nothing to tie his report "to the facts of the case"—(1) he did not review the asserted patents, (2) he did not know whether the asserted patents are the same as those asserted in *Headwater Rsch. LLC v. Samsung Elecs. Co.*, No. 2:22-CV-00422-JRG-RSP ("Headwater I"), (3) he did not know that the accused products in this case are different from those accused in *Headwater I*, (4) he was not provided a single document unique to this case, and (5) he was not provided any deposition transcripts from this litigation. Dkt. 181 at 7–8 (citing Ex. C (Dkt. 181-3) (Groehn 10/18/2024 Rough Tr.) at 29:8–10, 27:6–9, 27:16–19, 32:21–24, 32:25–33:3; Ex. A (Dkt. 181-1) (Groehn Rpt.) at 66 (Materials Considered List)). In fact, Dr. Groehn could only vaguely recall that the features at issue in this case are push notifications. *Id.* at 7 (citing Ex. C (Dkt. 181-3) (Groehn 10/18/2024 Rough Tr.) at 27:24–28:3). Finally, Dr. Groehn further failed to (1) speak with Headwater's technical expert, (2) review Headwater's technical expert's report, and (3) verify his inputs or results with Headwater's expert. *Id.* at 8 (citing Ex. C (Dkt. 181-3) (Groehn 10/18/2024 Rough Tr.) at 31:21–24, 37:5–8).

The Order erred in overlooking these deficiencies. Accordingly, the Court should set the Order aside and exclude Dr. Groehn's report.

B. The Subjective Definition of “Battery Life” Requires Exclusion Under Rule 702

The Order¹ further erred in concluding that Dr. Groehn’s definition of “battery life” is a matter “best left for cross examination,” relying only on the assertion that “Headwater has put forth a sufficient explanation for using its definition in this instance” without further elaboration. *Headwater I* Order at *4. Dr. Groehn’s definition of “battery life” is subjective and respondent-dependent, making it inherently unreliable and indicative of a methodological flaw requiring exclusion under Rule 702—this should not go to the jury.

Rather than providing an objective measure of battery life, such as time in hours as is common in the industry, Dr. Groehn allowed survey respondents to define “standard battery life” based on their own interpretations. Dkt. 181 at 9 (citing Ex. A (Dkt. 181-1) (Groehn Rpt.) ¶ 76). This vague and subjective framing of battery life—and of its further undefined incremental levels of increase (5% and 10%)—forced each respondent to individually define the term, and estimate the increase above an uncertain baseline, rendering the survey results meaningless for determining quantifiable “profit” or “price.” *Id.* at 10–12. This flaw undermines the reliability of Dr. Groehn’s opinions, particularly given that advertised battery life metrics were available for the phones he analyzed. *Id.* at 10 (citing Ex. B (Dkt. 181-2) (Groehn 5/13/2024 Tr.) at 120:3–16).

¹ The Order did not substantively address Samsung’s arguments. Instead, the Order “adopt[ed]” the Court’s previous ruling on a similar challenge to a nearly identical report raised by Samsung in *Headwater I*. Order at 3 (citing *Headwater Rsch. LLC v. Samsung Elecs. Co.*, No. 2:22-CV-00422-JRG-RSP, 2024 WL 4712953, at *3 (E.D. Tex. Nov. 7, 2024) (the “*Headwater I* Order”). Accordingly, Samsung addresses the reasoning provided in the *Headwater I* Order.

C. Dr. Groehn’s Use of a Conjoint Analysis for Incremental Profit is Unreliable

The Order² erred in holding Dr. Groehn’s use of conjoint analysis here was permissible on the basis that “[t]here is no rule that [conjoint] analysis is *per se* unreliable. . . .” *Headwater I* Order at *3. Samsung did not argue for the categorical inadmissibility of conjoint analyses. Instead, Samsung specifically challenged how Dr. Groehn applied conjoint analysis in this instance, which, as the literature supports, exceeds the methodology’s accepted use. Dkt. 181 at 12–13. Samsung presented strong evidence demonstrating that conjoint analysis is widely accepted only for measuring consumer preferences—not for calculating incremental profits. *Id.* at 13–14. The Order mischaracterized Samsung’s argument as asserting a blanket challenge to conjoint analysis in general. *Headwater I* Order at *3.

As Dr. Groehn’s own sources unequivocally state, “[i]t should be emphasized that conjoint analysis can only estimate demand. Conjoint survey data, alone, **cannot be used to compute market equilibrium outcomes such as market prices**,” precisely what Dr. Groehn has done here. Dkt. 181 at 13 (citing Ex. D (Dkt. 181-4) (Allenby 2019) at 81 (emphasis added)). Dr. Groehn himself admitted that **no smartphone maker in the world uses conjoint analysis this way**. Dkt. 181 at 12 (citing Ex. B (Dkt. 181-1) (Groehn 5/13/2024 Tr.) at 125:23-126:5). The Order erred by failing to scrutinize whether Dr. Groehn’s application of conjoint analysis to calculate market equilibrium incremental price is admissible under Rule 702, especially in light of Samsung’s unrebutted evidence that conjoint data alone cannot fully account for the real-world market complexities of the smartphone consumer market today such as structured purchase plans, discounts, layers of retailers, and many other factors that separate Dr. Groehn’s average sales price

² Like the “battery life” issue, the Order adopted the Court’s previous ruling in the *Headwater I* Order on the conjoint analysis issue. Order at 3. Accordingly, Samsung addresses the reasoning provided in the *Headwater I* Order.

from the revenues (and thus incremental profit) actually realized by Samsung. By doing so, the Order improperly allowed a methodologically flawed analysis to be presented to the jury, rather than excluding testimony that fails *Daubert's* reliability standard.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on April 18, 2025. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

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